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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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8 CHARLES ERIC STEWART,

9 *Petitioner,*

10 vs.

11 STATE OF NEVADA, *et al.,*

12 *Respondents.*  
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2:09-cv-01063-PMP-GWF

ORDER

14 This habeas action under 28 U.S.C. § 2254 comes before the Court on Petitioner's  
15 motion (#31) for a stay and his second motion (#30) for appointment of counsel.

16 The motion for a stay will be denied without prejudice. Petitioner's conclusory request  
17 for a stay does not satisfy the requirements for a stay under either potentially available  
18 alternative stay procedure. *See generally King v. Ryan*, 564 F.3d 1133, 1139-43 (9<sup>th</sup> Cir.  
19 2009).

20 On the motion for appointment of counsel, the Sixth Amendment right to counsel does  
21 not apply in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir.  
22 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to  
23 represent a financially eligible habeas petitioner whenever "the court determines that the  
24 interests of justice so require." The decision to appoint counsel lies within the discretion of  
25 the court; and, absent an order for an evidentiary hearing, appointment is mandatory only  
26 when the circumstances of a particular case indicate that appointed counsel is necessary to  
27 prevent a due process violation. *See, e.g., Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th  
28 Cir.1986); *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir.1965).

1 In the present case, having reviewed the pleadings, the two form and/or conclusory  
2 requests for counsel, and the remaining papers on file, the Court finds, again, that the  
3 interests of justice do not require that counsel be appointed. Neither the procedural nor the  
4 merits issues in this case are extraordinarily complex, and Petitioner has demonstrated an  
5 adequate ability to articulate his claims and contentions. Petitioner urges that he has tried to  
6 fill out the forms correctly but nonetheless has "failed miserably," given the Court's ruling on  
7 the exhaustion issues. However, while almost any *pro se* litigant would be better served with  
8 the assistance of counsel, that is not the standard for appointment of counsel. *Cf. Rand v.*  
9 *Rowland*, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997), *opinion reinstated in pertinent part*, 154 F.3d  
10 952, 954 n.1 (9<sup>th</sup> Cir. 1998)(*en banc*). Merely because Petitioner has not prevailed on an  
11 issue does not lead to a conclusion that the interests of justice require the appointment of  
12 counsel. There is no right to counsel in federal habeas proceedings, and the cases generally  
13 are pursued by inmates proceeding *pro se*.

14 IT THEREFORE IS ORDERED that Petitioner's motion (#31) for a stay is DENIED  
15 without prejudice and his second motion (#30) for appointment of counsel is DENIED.

16 IT FURTHER IS ORDERED that Petitioner shall have thirty (30) days from entry of this  
17 order within which to file a motion for dismissal without prejudice of the Petition, as amended,  
18 for partial dismissal only of the unexhausted Ground 3, and/or for other appropriate relief.

19 The entire Petition, as amended, will be dismissed without further advance notice for  
20 lack of complete exhaustion if an appropriate motion is not timely filed.

21 DATED: February 13, 2012

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25 PHILIP M. PRO  
26 United States District Judge  
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